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CLEARINGHOUSE RULE 94-167

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated November 1991.]

2. Form, Style and Placement in Administrative Code

- a. The analysis to the rule should include a reference both to the statute authorizing the promulgation of the rule and the statute interpreted by the rule.
- b. “Department” should be defined in the definition section.
- c. In s. ILHR 218.02 (1), the hyphen should be replaced by the word “to.”
- d. In s. ILHR 218.14 (5), the reference to “s. ILHR 218.14 (2)” should be changed to “sub. (2).”
- e. Should the reference to “the other party” in the first sentence of s. ILHR 218.17 be changed to “all other parties”?
- f. In s. ILHR 218.17, the term “Administrative Law Judge” should not be capitalized.
- g. The title of s. ILHR 218.19 (2) is not considered part of the text; therefore, it appears the section should be redrafted to expressly provide for filing a transcript with the division.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the purpose statement, s. ILHR 218.01, the terms “law” and “laws” are not used consistently. Use of the term should be consistent throughout the rule.

b. In s. ILHR 218.02 (4), the definition of “day” could also cross-reference s. 990.001 (4), Stats., to clarify the intended standards for computation of time. [See also s. 227.27 (1), Stats.]

c. In s. ILHR 218.02 (7), the phrase “but is not limited to” does not appear to be necessary.

d. In s. ILHR 218.03 (3) (intro.), it is not clear why the concept of a “certificate” is used. The term “acknowledgment” might be more appropriate in the context presented. Also, in the last clause of the introduction, the phrase “all of” should be inserted after the word “contain.”

e. It is not clear how a complaint is “deferred” under s. ILHR 218.03 (5).

f. Under s. ILHR 218.03 (6), is it intended that all timely amendments of a complaint must be investigated by the department? Is this true even for unrelated incidents?

g. Section ILHR 218.03 (7) uses the phrase “duly authorized representative or attorney of record,” while sub. (1) only refers to a “duly authorized representative.” The inconsistent use of these phrases should be reviewed. Perhaps a definition of “representative” could be drafted that includes attorneys of record and all other persons who could act as representatives.

h. Section ILHR 218.04 (1) requires the department to serve a copy of a complaint upon a respondent prior to the commencement of an investigation in certain instances. Should another subsection be created to describe the requirements of service of a complaint on a respondent after an investigation in other circumstances?

i. Is “dismissal” under s. ILHR 218.05 (2) intended to be “with prejudice”? [See s. ILHR 218.03 (7), relating to withdrawal of complaints.]

j. In s. ILHR 218.07 (3), should the word “may” be replaced by the word “shall”?

k. In s. ILHR 218.10, reference is made to the “reasons” set forth in s. ILHR 218.05 (1). However, as drafted, the items are presented as questions. The agency may wish to consider substituting the term “conditions” for “reasons” for clarity purposes. As an alternative, s. ILHR 218.05 could be redrafted using specific statements or “reasons.” [See, also, the reference to “requirements of s. ILHR 218.05 (1)” in s. ILHR 218.03 (6).]

l. In s. ILHR 218.11 (1), the third sentence would be clearer if the phrase “for the hearing” were inserted after the word “date.”

m. In s. ILHR 218.14 (2), is there a need to allow for additional flexibility with regard to the 10-day prior notice of discovery directed to an unrepresented party? Also, is there a need to more specifically define or describe the term “unrepresented party”? [See comment 5, g, above.]

n. Section ILHR 218.19 (1) states that after five years, the original tapes “will be discarded.” If this provision is intended to be mandatory, then the term “shall” should be substituted for “will” for purposes of clarity. However, if the provision is intended to be permissive, the term “will” should be replaced by “may.” [See, also, s. 16.61, Stats.]

o. In s. ILHR 218.19 (3), is the last sentence necessary given the first sentence of sub. (2)? Perhaps the two subsections should be combined.

p. The rationale for continuing to provide for payment of interest at 12% annually in s. ILHR 218.20 (4) is not clear. Further, is “an annual rate of 12% simple interest” intended to mean the interest will not be compounded? This may need to be clarified.

q. Section ILHR 218.22 refers to preemployment inquiries and employment records. This section appears to be unrelated to the remainder of ch. ILHR 218, which appears to be procedural in nature. Should this provision be placed elsewhere in the Administrative Code? [Also, s. ILHR 218.22 should be reviewed for its compatibility with 42 U.S.C. s. 12112 (6) (3).]

r. The initial applicability section could be problematic due to the potential uncertainty as to the intended scope of the term “pending.” Could this be viewed as any case where there has not been a final decision by the division? Any cases before the Personnel Commission? This provision should be reviewed and clarified if possible in the final rule.